

STATE'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS OR IN LIMINE FOR JURY INSTRUCTION

A.R.S. § 28-1383(A)(1) prohibits drivers from driving while impaired while their license has been restricted for a DUI offense, even if they are not violating the conditions of the restriction.

The State of Arizona, by and through undersigned counsel, in response to the defendant's Motion to Dismiss or In Limine For Jury Instruction, requests that this Court deny the motion for the reasons set forth in the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS:

On June 27, 1997, at approximately 12:45 a.m., Officer Houser and Officer Layden observed two vehicles in the southbound lane of Thirty-Second Street at approximately Greenway. Both vehicles were weaving from side to side in their lanes. The officers decided to stop the defendant's vehicle after it had crossed over the double yellow lines by approximately one foot three separate times. The officers signaled the defendant to stop by using their red and blue lights, siren, and spotlight. The defendant pulled into a Jack-In-The-Box restaurant parking lot and stopped.

Officer Layden informed the defendant why he was being stopped. The defendant stated that he had been watching the female occupant in the second vehicle because she was to follow him to Jack-In-The-Box. The defendant got out of his car and Officer Layden administered standardized field sobriety tests. Officer Layden observed six cues of impairment on the HGN test, three cues on the walk and turn, and three cues on the one-legged stand. The defendant was placed under arrest, handcuffed, searched and transported to the DUI van at Cave Creek and Bell.

While at the DUI van, the defendant told officers that he had been drinking at the North Shore Bar at Thirty-Second Street and Greenway, and had consumed approximately a six-pack of beer since 10 p.m. After leaving the bar, the defendant stated, he was headed towards the Jack-In-The-Box. Officer Simonick noted that the defendant's face was flushed and that his breath had a moderate odor of alcohol. The defendant submitted to breath tests with results of .124% at 1:43 a.m. and .128% at 1:50 a.m.

The defendant has been charged with one count of aggravated DUI, a class 4 felony.

LAW:

The defendant alleges that A.R.S. § 28-1383(A) is unconstitutionally vague and violates due process. This argument fails to consider the fact that the aggravated driving under the influence statute was amended to address individuals that are driving under the influence on a restricted license but within the parameters of the restriction.

The previous aggravated driving statute, A.R.S. § 28-692.02(A)(1), read as follows:

A person is guilty of a class 5 felony if the person does any of the following:

1. Commits a violation of 28-692 while the person's drivers license is suspended, canceled, revoked or refused **or in violation of a restriction** placed on a drivers license as a result of violating 28-692 or 28-694.

[Emphasis added.] By contrast, the current aggravated DUI statute, A.R.S. § 28-1383(A)(1), reads:

A person is guilty of aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs if the person does any of the following:

1. Commits a violation of § 28-1381, § 28-1382 or this section while the person's driver license or privilege to drive is suspended, canceled, revoked or refused or **while a restriction is placed on the person's driver license or privilege to drive** as a result of violating § 28-1381 or 28-1382 or under § 28-1385.

[Emphasis added.] The current aggravated DUI statute clearly includes impaired drivers who are driving while a restriction has been placed on their license, even if they are not in violation of that restriction. In light of this amendment, the defendant is not insulated from felony prosecution by claiming that he was not driving in violation of his restriction.

Conclusion:

For the foregoing reasons, the State requests this Court to deny the defendant's Motion to Dismiss or Motion in Limine for Jury Instruction.